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**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE COMPLAINT OF  
BUREAU OF INDIAN AFFAIRS, UNITED  
STATES OF AMERICA, AGAINST  
MOHAVE ELECTRIC COOPERATIVE,  
INC. AS TO SERVICES TO THE  
HAVASUPAI AND HUALAPAI INDIAN  
RESERVATIONS.

DOCKET NO. E-01750A-05-0579

**STIPULATED STATEMENT OF  
FACTS AND ISSUES IN DISPUTE**

Complainant Bureau of Indian Affairs ("BIA") and Respondent Mohave Electric Cooperative, Inc. ("Mohave") hereby submit the following stipulated statement of facts and issues in dispute. In stipulating to the following facts, the Parties reserve their objections as to relevancy.

**STIPULATED FACTS**

1. Mohave is an Arizona non-profit public service corporation regulated by the Arizona Corporation Commission ("ACC").

2. BIA, U.S. Department of the Interior, is an executive agency of the United States of America. Under 25 U.S.C. § 13, the BIA is authorized to provide support for the general welfare and civilization of Indians. The Havasupai and the Hualapai tribes are federally recognized Indian tribes for whom the BIA provides federal assistance.

3. BIA began providing electrical power to governmental facilities at the Havasupai Village at the bottom of the Grand Canyon, which is within the State of Arizona,

1 by 1965 using gas powered generators. By 1971, BIA supplied electric energy to Havasupai  
2 Village by means of diesel generators and electric lines owned and operated by the BIA,

3 4. BIA owns and operates two electrical utilities providing retail electrical  
4 service on Indian reservations in Arizona (the San Carlos Irrigation Project Power Division  
5 and the Colorado River Irrigation Project Power Division), as well as the Flathead Irrigation  
6 Project Power Division in Montana.

7 5. There are no roads connecting Havasupai Village with other parts of  
8 Arizona.

9 6. By 1975, the Havasupai Tribe had become increasingly dependent on  
10 electricity. In January, 1975, the Havasupai Tribe passed resolution no. 4-75. Also in  
11 January, 1975, the Havasupai Tribal Chairman wrote a letter to Mohave.

12 7. In March, 1975, the Hualapai Tribe passed resolution no. 13-75.

13 8. By 1976, at least two electrical generators existed on the Hualapai Reservation  
14 in the Frazier Wells area, and a third generator existed at the end of Indian Route 18.

15 9. From approximately 1968 to 1981, BIA studied and evaluated alternatives for  
16 securing electricity for the Havasupai and Hualapai Reservations. The alternatives studied  
17 by BIA included (i) expanding the existing generators and (ii) installing a 70-mile electric  
18 line. BIA eventually chose the second option.

19 10. In June 1976, BIA issued a Request for Quotation ("RFQ") to "provide  
20 electric energy to the Hualapai and Havasupai Reservation, Arizona in accordance with the  
21 attached specifications, terms and conditions."

22 11. Mohave, Arizona Public Service Company and Citizens Utilities Company  
23 responded to the RFQ.

24 12. Prior to 1981, no commercial or cooperative electrical power provider  
25 constructed or maintained electrical distribution or transmission facilities through which  
26 electricity was provided to Long Mesa.  
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1           13. On approximately October 1, 1981, Mohave entered into Negotiated Electrical  
2 Utility Contract GS-OOS-67021 (the "Contract") with the United States of America acting  
3 though the Administrator of the General Services Administration and on behalf of BIA to  
4 construct a power line (the "Line") approximately 70 miles long from Mohave's existing  
5 facilities at the Nelson Substation to Long Mesa and to supply electrical energy up to 1500  
6 KW for the operation of its facilities on the Hualapai and Havasupai Reservations.

7           14. Mohave applied for, and received, a \$1,600,000 loan from the Rural  
8 Electrification Administration (REA) for construction of the Line.

9           15. The BIA granted an easement for right-of-way across Hualapai and Havasupai  
10 reservations "to be used to construct, install, operate and maintain an electrical distribution  
11 line, along with the right to ingress thereto and egress therefrom." The Hualapai and  
12 Havasupai Tribes each consented to this grant of easement for right-of-way to Mohave.

13           16. Mohave completed construction of the Line in November 1981 and by the  
14 spring of 1982 was delivering electricity through the Line.

15           17. As a REA (now known as Rural Utilities Service) borrower, every year  
16 Mohave must file with the REA its financial and statistical data.

17           18. The Line is a 24.9 KV electric line.

18           19. Mohave supplied electricity through the Line to be used by the BIA for its  
19 facilities on the Hualapai and Havasupai Reservations, by the Indian Health Services for a  
20 medical clinic, by the Hualapai Tribe and its members, and by members of the Havasupai  
21 Tribe. The BIA uses electricity supplied by the Line in Havasupai Village for a BIA school,  
22 living quarters for BIA teachers and law enforcement personnel, a BIA detention facility,  
23 and a BIA maintenance building.

24           20. In Decision No. 51491, issued on October 22, 1980, the ACC referred to the  
25 Line as "an electric line extension from [Mohave's] certified area across a portion of the  
26 Hualapai and Havasupai Indian Reservation . . . ." The ACC concluded: "1. It is in the  
27 best interest of the consumers of Mohave Electric Cooperative, Inc, that the applicant be  
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1 allowed to finance and expend the amounts proposed. 2. We find that such borrowings are  
2 lawful and in the public interest and that the loan will not impair Mohave's ability to  
3 perform as a public utility."

4 21. On January 7, 1982, before the Line became fully operational, Mohave filed a  
5 rate application. In Decision No. 53174, issued August 11, 1982, the ACC stated "MEC has  
6 included \$32,000 in interest associated with a transmission line dedicated to serving the  
7 Hualapai Indian Reservation, a line which presently produces no income. Staff has likewise  
8 included this interest in its calculations of TIER. The Commission believes that both parties  
9 erred in effectively asking MEC's ratepayers to pay for plant which is not used and useful,  
10 will not be used and useful, and was never intended to be used and useful in the provision of  
11 electric service to such ratepayers.... Therefore, the Commission will eliminate the \$32,000  
12 interest expense from the calculation of TIER and rate of return." Decision No. 53174 at 8-  
13 9 (emphasis in original).

14 22. In 1990, Mohave filed another rate application. As part of its application,  
15 Mohave submitted to the ACC a cost of service study for the twelve months ending July 31,  
16 1989. In addition to the cost of service study, Mohave submitted to the ACC its REA Form  
17 7 for the year ending December 31, 1988.

18 23. Mohave billed BIA monthly. Included on Mohave's monthly invoices was a  
19 Facility Charge, which ranged from approximately \$11,000 to approximately \$15,000 per  
20 month. Mohave billed BIA for a Facility Charge every month beginning in April, 1982  
21 through and including February, 1997.

22 24. The total project cost for the Line was \$1,145,651.55. BIA paid Mohave the  
23 balance of the total project cost related to the Line, \$923,243.92, by approximately March  
24 1991.

25 25. On or about April 19, 1993, BIA wrote Mohave, stating that "The  
26 Government hereby notifies Mohave Electric of its intent to exercise" the renewal option.  
27 In the same letter, BIA stated that there was a "need to re-negotiate and amend the existing  
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1 contract” because “the Government reimbursed Mohave all cost associated with the  
2 construction.”

3 26. In an internal memorandum dated December 14, 1994, BIA stated that “We  
4 are approaching a fourth year without a contract for the services [provided by Mohave] as  
5 defined in the contract documents” and discussed a “request to negotiate a new contract.”

6 27. On or about June 15, 1995, Mohave informed BIA that Mohave believed the  
7 Contract had expired in 1992, and requested information about BIA’s intentions.

8 28. On or about June 6, 1996, Mohave informed BIA that Mohave believed that  
9 continuing the service was not in the best interests of Mohave’s individual cooperative  
10 members, and that Mohave sought to transfer the Line to BIA and move the metering  
11 equipment from Long Mesa to Mohave’s Nelson Substation.

12 29. On or about March 24, 1997, Mohave moved its metering equipment from  
13 Long Mesa to the Nelson Substation and began metering electricity supplied through the  
14 Line at Mohave’s Nelson Substation rather than at Long Mesa.

15 30. Beginning in July 1998 and through September 2003, Mohave credited BIA  
16 for the electricity used by certain other accounts along the Line based on Mohave’s meter  
17 reading. After Mohave stopped giving BIA credit for the electricity used by other accounts,  
18 BIA paid Mohave under protest.

19 31. On or about July 31, 2001, Mohave’s counsel wrote to the Western Area  
20 Power Administration (“WAPA”) and offered to transfer the Line to WAPA. To date,  
21 WAPA has not accepted Mohave’s offer.

22 32. On or about March 6, 2002, BIA wrote Mohave stating that “In accordance  
23 with the Contract, the Government exercises its option to extend the contract for a ten year  
24 period from April 1, 2002 through March 31, 2012.” BIA stated that some provisions of the  
25 Contract had been amended and/or deleted.

26 33. On or about March 20, 2002, Mohave’s counsel wrote BIA and stated that the  
27 Contract “expired of its own terms in 1992 when the Bureau of Indian Affairs did not seek  
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1 an extension of the Contract. It no longer exists. Therefore, that Contract (no longer being  
2 in existence) is not in effect, and cannot be extended as requested.” Mohave contended that,  
3 since 1992, it had been serving the BIA electrical service at Mohave’s Nelson Substation  
4 under a month-to-month contract.

5 34. As of July 2003, Mohave provided electricity to twelve (12) accounts along  
6 the Line, including six Hualapai Tribal Council accounts, two other Department of Interior  
7 accounts, an Arizona Telephone transmitting tower, a ranch, and a cabin. Mohave billed  
8 these twelve accounts. Two of those accounts, the Hualapai Pump at Tank Well and a cabin  
9 on Nelson Road, are within Mohave’s certificated area, as is approximately the first couple  
10 of miles of the Line.

11 35. On or about July 22, 2003, Mohave executed a Notice of Quit Claim,  
12 Conveyance and Assignment of Interest and Abandonment of Property (the “Quit Claim”)  
13 which stated that Mohave quitclaimed, conveyed and abandoned the Line, meters, and  
14 service drops to the United States Department of Interior, Bureau of Indian Affairs, the  
15 Hualapai Indian Tribe and the Havasupai Indian Tribe as the respective interests may be  
16 established or reflected. In the Quit Claim, Mohave also stated it assigned and transferred  
17 its rights and interests in a pole license agreement that Mohave had entered into with  
18 Boquillas Cattle Company.

19 36. On or about July 23, 2003, Mohave’s counsel wrote BIA, the Hualapai Nation  
20 and the Havasupai Nation stating that the Contract had terminated in 1992, that Mohave had  
21 no authority to serve outside its CCN or on tribal lands, that the Line was not necessary or  
22 useful for Mohave, and that Mohave had abandoned and quitclaimed the Line to BIA, the  
23 Hualapai Nation and the Havasupai Nation. Mohave stated that it was willing “to continu[e]  
24 to provide wholesale electrical service at its Nelson substation” to BIA, the Hualapai Nation  
25 and the Havasupai Nation “under its ACC approved Large Commercial Rate which is its  
26 lowest tariff.”  
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37. On or about August 7, 2003, Mohave's counsel wrote BIA, the Hualapai Nation and the Havasupai Nation. Mohave enclosed a copy of the Quit Claim and listed the "accounts and facilities that are now owned by your entities, as your interests may be established." Mohave included the following list of 12 accounts that were receiving electrical service from Mohave along the Line:

- A. Account # 63626-000  
Arizona Telephone Company  
500' South Havasupai Tribal Electric System  
near 8<sup>th</sup> pole South of H-Frame  
Long Mesa Tower
- B. Account # 44567-003  
Diamond A Ranch  
Camp 16 Supai Line
- C. Account # 29740-001  
Department of Interior  
Fire Tower – Supai Road  
Thornton Tower
- D. Account # 896-083 [letter indicated #896-084]  
Hualapai Tribal Council  
Hunters Building – Youth Camp
- E. Account # 896-084  
Hualapai Tribal Council  
Lake Circulation Pump  
Youth Camp Pond
- F. Account # 896-060  
Hualapai Tribal Council  
Frazier Wells Pump  
Well #1
- G. Account # 896-073  
Hualapai Tribal Council  
Frazier Wells Pump 2  
Well #2

- H. Account # 896-100  
Hualapai Tribal Council  
Water Well T28N R7w  
Fish Pond
- I. Account # 28135-001  
Bravo, W C  
Supai Line near Frazier Wells
- J. Account # 451-055  
TCIA – Department of Interior – BIA  
Long Mesa Radio Repeater Site  
Long Mesa End
- K. Account # 896-027  
Hualapai Tribal Council  
Pump at Tank Well  
Well site Nelson Road
- L. Account # 44561-006  
Cabin on Nelson Road

38. On or about September 2, 2003, BIA wrote to Mohave, stating the quitclaim is not valid until accepted by the grantee, that BIA had not decided whether it would accept Mohave's quitclaim, that Mohave could not dispose of the Line without authorization by the ACC pursuant to A.R.S. § 40-285(A), and that "Mohave Electric remains the owner of all its interests in the Nelson-Long Mesa Line at the present time."

39. On or about September 12, 2003, BIA wrote Mohave stating that BIA did not accept quitclaim of the Line, that the quitclaim was void and of no effect, that BIA received power at Long Mesa rather than the Nelson substation, and that Mohave was responsible for ongoing operation and maintenance of the Line.

40. In approximately October 2003, construction was commenced on a 13.6 mile long spur from the Line to the Bar Four area of the Havasupai Reservation.

41. In the summer of 2004, ACC chairman Marc Spitzer attempted to broker a resolution. The BIA, Mohave, and others, including ACC staff, were unable



1 to settle the matter. Christopher Kempley, ACC chief counsel, then wrote Mohave a  
2 letter on September 8, 2004.

3 42. Between September 2004 and June 2008, BIA paid Mohave for repairs  
4 and maintenance to the Line.

5 43. On or about August 10, 2005, BIA filed its Complaint against Mohave  
6 with the ACC.

7 44. On or about November 13, 2007, Mohave, UNS Electric, Inc. and  
8 Arizona Public Service Company entered into an Operations Protocol Agreement  
9 related to maintenance and repairs for the Line.

#### 12 ISSUES IN DISPUTE

13 A. Whether the Contract between Mohave and BIA controls or otherwise affects  
14 any duty or obligation of Mohave at the present time?

15 B. Whether Mohave's construction, operation, and maintenance of the Line  
16 affect any duty or obligation of Mohave?

17 C. Whether the Line was a transmission line providing wholesale electrical  
18 power or a distribution line providing retail service?

19 D. Whether the BIA and other accounts along the Line are retail customers of  
20 Mohave?

21 E. Whether Mohave's service territory includes the area served by the Line?

22 F. Whether Mohave's quitclaim and abandonment of the Line to BIA, the  
23 Hualapai Tribe and the Havasupai Tribe are valid and effective?

24 G. Whether Mohave currently owns the Line?

25 H. Whether Mohave is responsible for operation and maintenance of the Line?

26 I. Whether Mohave must meter electrical service to BIA at Long Mesa ?  
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1 J. Whether Mohave may dispose of or abandon the 70-mile Line without prior  
2 approval of ACC?

3 K. Whether Mohave owes restitution for past BIA expenditures concerning the  
4 maintenance and upkeep of the Line as well as past BIA payments for electricity used by  
5 non-BIA accounts along the Line?

6 L. Does the ACC have jurisdiction over the relief requested by BIA and the  
7 issues raised in its Complaint?

8 M. What is the effect, if any, of ACC Decision No. 53174 (August 11, 1982) on  
9 the issues on this case?

10  
11 **THE PARTIES' CONTENTIONS WITH RESPECT TO THE CONTRACT**

12 A. Mohave contends that the Contract ended on or about April 1992, that it was  
13 thereafter not extended, that the Contract has no relevance to the current obligations of  
14 Mohave, if any, and that the BIA has accepted Mohave's quitclaim of the Line.

15 B. BIA contends that for the relief it is seeking from the ACC, the pertinent facts  
16 are that Mohave and BIA entered into the Contract and that Mohave built the Line pursuant  
17 to the Contract. It is immaterial to the relief sought whether the Contract is currently in  
18 effect. BIA disagrees with Mohave's contention that the Contract terminated and therefore

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1 its quitclaim and abandonment of the Line was legally permitted.

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3 DATED this 5th day of September, 2008.

4 BRYAN CAVE LLP

5  
6  
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25 **ORIGINAL and 13 COPIES** of the  
26 foregoing were hand-delivered for  
27 filing this 5th day of September, 2008 to:

28 Docket Control  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

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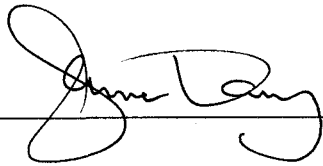
1 **COPY** of the foregoing hand-delivered this  
2 5th day of September, 2008, to:

3 Hearing Division  
4 Arizona Corporation Commission  
5 1200 W. Washington  
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7 **COPY** of the foregoing mailed this  
8 5th day of September, 2008, to:

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